

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

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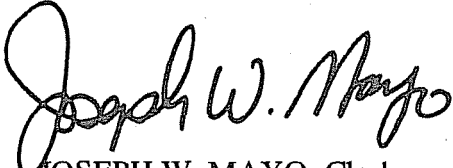
House of Representatives, May 5, 1993

**An Act Concerning the Operation of Aircraft under the Influence of  
Intoxicating Liquor or Drugs.**

(AFTER DEADLINE)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.  
Reference to the Committee on Legal Affairs suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Speaker MARTIN of Eagle Lake.  
Cosponsored by Representatives: BAILEY of Farmington, DRISCOLL of Calais, HUSSEY of  
Milo, MARTIN of Van Buren, MELENDY of Rockland, O'GARA of Westbrook, PLOURDE of  
Biddeford, RICKER of Lewiston, STROUT of Corinth, Senators: BRANNIGAN of  
Cumberland, GOULD of Waldo, PARADIS of Aroostook.

Be it enacted by the People of the State of Maine as follows:

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4       **Sec. 1. 6 MRSA §202, sub-§9**, as amended by PL 1971, c. 404,  
§26, is further amended to read:

6       **9. Reckless operation.** For any person to operate an  
aircraft in the air, ~~or on the ground or water, while under the~~  
8 ~~influence of intoxicating liquor, narcotics or other~~  
~~incapacitating drug, or to operate an aircraft in the air~~ or on  
10 the ground or water, in careless or reckless manner so as to  
endanger the life or property of another. In any proceeding  
12 charging careless or reckless operation of aircraft in violation  
of this section, the court in determining whether the operation  
14 was careless or reckless shall consider the standards for safe  
operation of aircraft prescribed by federal statutes or  
16 regulations governing aeronautics;

18       **Sec. 2. 6 MRSA §202, sub-§10**, as amended by PL 1971, c. 404,  
§27, is further amended to read:

20       **10. Trespass.** For any person to trespass upon the landing  
22 area of any licensed or registered airport;

24       **Sec. 3. 6 MRSA §202, sub-§§11 and 12** are enacted to read:

26       **11. Operating an aircraft under the influence or with**  
**excessive blood-alcohol level.** For any person to operate or  
28 attempt to operate an aircraft under the influence of  
intoxicating liquor or drugs or a combination of liquor and drugs  
30 or with excessive blood-alcohol level. Notwithstanding section  
203, a person is guilty of a Class D crime if that person  
32 operates or attempts to operate an aircraft:

34       A. While under the influence of intoxicating liquor or  
drugs or a combination of liquor and drugs; or

36       B. While having 0.04% or more by weight of alcohol in that  
38 person's blood; and

40       **12. Failure to comply with duty to submit.** For any person  
to fail to comply with the duty to submit to a test under this  
42 subsection and section 204. A person is guilty of failure to  
comply with the duty to submit to and complete a chemical test  
44 under section 204 if that person refuses to submit to or fails to  
complete a chemical test when requested to do so by a law  
46 enforcement officer who has probable cause to believe that the  
person operated or attempted to operate an aircraft while under  
48 the influence of intoxicating liquor or drugs or a combination of  
both.

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Sec. 3. 6 MRSa §§204 and 205 are enacted to read:

**§204. Implied consent to chemical tests**

A person who operates or attempts to operate an aircraft within this State has a duty to submit to chemical testing to determine that person's blood-alcohol level and drug concentration by analysis of blood, breath or urine if there is probable cause to believe that the person has operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs. The duty to submit to a chemical test includes the duty to complete either a blood, breath or urine test. Tests and procedures applicable in determining whether a person is under the influence are governed by section 205.

**§205. Operating an aircraft under the influence or with an excessive blood-alcohol level; tests and procedures**

1. Blood or breath test. If the law enforcement officer has probable cause to believe a person operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs, then the officer shall inform the person that a breath test will be administered, unless, in the determination of the officer, it is unreasonable for a breath test to be administered; in which case another chemical test must be administered. When a blood test is required, the test may be administered by a physician of the accused's choice, at the request of the accused and if reasonably available. The law enforcement officer may determine which type of breath test, as described in subsection 5, will be administered.

2. Prerequisites to tests. Before any test is given, the law enforcement officer shall inform the person to be tested that, if that person fails to comply with the duty to submit to and complete the required chemical test at the direction of the officer, that person commits a civil violation for which the person may be required to pay a civil forfeiture of up to \$500. The officer shall also inform the person that the failure to comply with the duty to chemical tests is admissible as evidence against that person at any trial for operating under the influence of intoxicating liquor or drugs.

No test results may be excluded as evidence in a proceeding before an administrative officer or court of this State as a result of the failure of the law enforcement officer to comply with these prerequisites. The only effects of the failure of the officer to comply with the prerequisites are as provided in subsection 7.

2 3. Results of test. Upon the request of the person who  
3 submits to a chemical test or tests at the request of a law  
4 enforcement officer, full information concerning the test or  
5 tests must be made available to that person or that person's  
6 attorney by the law enforcement officer.

7 4. Blood-alcohol level. The following percentages by  
8 weight of alcohol in the defendant's blood have the following  
9 evidentiary effects.

10 A. If there was, at the time alleged, 0.02% or less by  
11 weight of alcohol in the defendant's blood, it is prima  
12 facie evidence that the defendant was not under the  
13 influence of intoxicating liquor.

14 B. If there was, at the time alleged, in excess of 0.02%  
15 but less than 0.04% by weight of alcohol in the defendant's  
16 blood, it is relevant evidence, but it is not to be given  
17 prima facie effect in indicating whether or not the  
18 defendant was under the influence of intoxicating liquor  
19 within the meaning of this section, but that fact may be  
20 considered with other competent evidence in determining  
21 whether or not the defendant was under the influence of  
22 intoxicating liquor.

23 C. For purposes of evidence in proceedings other than those  
24 arising under section 202, subsection 11, it is presumed  
25 that a person was under the influence of intoxicating liquor  
26 when that person has a blood-alcohol level of 0.04% or more  
27 by weight.

28 D. Percent by weight of alcohol in the blood is based upon  
29 grams of alcohol per 100 milliliters of blood.

30 5. Administration of tests. Persons conducting analyses of  
31 blood, breath or urine for the purpose of determining the  
32 blood-alcohol level or drug concentration must be certified for  
33 this purpose by the Department of Human Services under  
34 certification standards set by that department.

35 Only a duly licensed physician, registered physician's assistant,  
36 registered nurse or a person certified by the Department of Human  
37 Services under certification standards set by that department,  
38 acting at the request of a law enforcement officer, may draw a  
39 specimen of blood to determine the blood-alcohol level or drug  
40 concentration of a person who is complying with the duty to  
41 submit to a chemical test. This limitation does not apply to the  
42 taking of breath specimens. When a person draws a specimen of  
43 blood at the request of a law enforcement officer, that person  
44 may issue a certificate that states that the person is in fact a  
45 person who is complying with the duty to submit to a chemical test.

2 duly licensed or certified person as required by this subsection  
3 and that the person followed the proper procedure for drawing a  
4 specimen of blood to determine the blood-alcohol level or drug  
5 concentration. That certificate, when duly signed and sworn to  
6 by the person, is admissible as evidence in any court of the  
7 State. It is prima facie evidence that the person was duly  
8 licensed or certified and that the person followed the proper  
9 procedure for drawing a specimen for chemical testing, unless,  
10 with 10 days' written notice to the prosecution, the defendant  
11 requests that the person testify as to licensure or  
12 certification, or the procedure for drawing the specimen of blood.

13 A law enforcement officer may take a sample specimen of the  
14 breath or urine of any person whom the officer has probable cause  
15 to believe operated or attempted to operate an aircraft while  
16 under the influence of intoxicating liquor or drugs and who is  
17 complying with the duty to submit to and complete a chemical  
18 test. The sample specimen must be submitted to the Department of  
19 Human Services or a person certified by the Department of Human  
20 Services for the purpose of conducting chemical tests of the  
21 sample specimen to determine the blood-alcohol level or drug  
22 concentration of that sample.

23 Only equipment approved by the Department of Human Services may  
24 be used by a law enforcement officer to take a sample specimen of  
25 the defendant's breath or urine for submission to the Department  
26 of Human Services or a person certified by the Department of  
27 Human Services for the purpose of conducting tests of the sample  
28 specimen to determine the blood-alcohol level or drug  
29 concentration of that sample. Approved equipment must have a  
30 stamp of approval affixed by the Department of Human Services.  
31 Evidence that the equipment was in a sealed carton bearing the  
32 stamp of approval must be accepted in court as prima facie  
33 evidence that the equipment was approved by the Department of  
34 Human Services for use by the law enforcement officer to take the  
35 sample specimen of the defendant's breath or urine.

36 As an alternative to the method of breath testing described in  
37 this subsection, a law enforcement officer may test the breath of  
38 any person whom the officer has probable cause to believe  
39 operated or attempted to operate an aircraft while under the  
40 influence of intoxicating liquor or drugs, by use of a  
41 self-contained, breath-alcohol testing apparatus to determine the  
42 blood-alcohol level, provided the testing apparatus is reasonably  
43 available. The procedures for the operation and testing of  
44 self-contained, breath-alcohol testing apparatuses must be as  
45 provided by rule adopted by the Department of Human Services.  
46 The result of any such test must be accepted as prima facie  
47 evidence of the blood-alcohol level in any court.

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2 Approved self-contained, breath-alcohol testing apparatuses must  
4 have a stamp of approval affixed by the Department of Human  
6 Services after periodic testing. That stamp of approval is valid  
8 for a limited period of no more than one year. Testimony or  
10 other evidence that the equipment was bearing the stamp of  
12 approval must be accepted in court as prima facie evidence that  
14 the equipment was approved by the Department of Human Services  
16 for use by the law enforcement officer to collect and analyze a  
18 sample specimen of the defendant's breath.

20 Failure to comply with any provision of this subsection or with  
22 any rule adopted under this subsection does not, by itself,  
24 result in the exclusion of evidence of blood-alcohol level or  
26 drug concentration, unless the evidence is determined to be not  
28 sufficiently reliable.

30 Testimony or other evidence that any materials used in operating  
32 or checking the operation of the equipment were bearing a  
34 statement of the manufacturer or of the Department of Human  
36 Services must be accepted in court as prima facie evidence that  
38 the materials were of a composition and quality as stated.

40 A person certified by the Maine Criminal Justice Academy, under  
42 certification standards set by the academy, as qualified to  
44 operate approved self-contained, breath-alcohol testing  
46 apparatuses may operate those apparatuses to collect and analyze  
48 a sample specimen of a defendant's breath.

50 6. Liability. No physician, physician's assistant,  
52 registered nurse, person certified by the Department of Human  
54 Services or hospital or other health care provider in the  
56 exercise of due care is liable in damages or otherwise for any  
58 act done or omitted in performing the act of collecting or  
60 withdrawing specimens of blood at the request of a law  
62 enforcement officer pursuant to this section.

64 7. Evidence. The drug concentration or percentage by  
66 weight of alcohol in the defendant's blood at the time alleged,  
68 as shown by the chemical analysis of the defendant's blood,  
70 breath or urine or by results of a self-contained, breath-alcohol  
72 testing apparatus authorized by subsection 5 is admissible in  
74 evidence.

76 When a person, certified under subsection 5, conducts a chemical  
78 analysis of blood or breath to determine blood-alcohol level, the  
80 person may issue a certificate stating the results of the  
82 analysis. That certificate, when duly signed and sworn to by the  
84 certified person, is admissible in evidence in any court of the  
86 State. It is prima facie evidence that the person taking a  
88 specimen of blood or urine was a person authorized by subsection

2 5; that the equipment, chemicals and other materials used in the  
3 taking of the blood or urine specimen or a breath sample were of  
4 a quality appropriate for the purpose of producing reliable test  
5 results; that any equipment, chemicals or materials required by  
6 subsection 5 to be approved by the Department of Human Services  
7 were in fact approved; that the sample tested by the person  
8 certified under subsection 5 was in fact the same sample taken  
9 from the defendant; and that the drug concentration or percentage  
10 by weight of alcohol in the defendant's blood was, at the time  
11 the blood or breath sample was taken, as stated in the  
12 certificate, unless with 10 days' written notice to the  
13 prosecution, the defendant requests that a qualified witness  
14 testify as to any of the matters as to which the certificate  
15 constitutes prima facie evidence. The notice must specify those  
16 matters concerning which the defendant requests testimony.

17 A person certified under subsection 5 as qualified to operate a  
18 self-contained, breath-alcohol testing apparatus to determine the  
19 blood-alcohol level may issue a certificate stating the results  
20 of the analysis. That certificate, when duly signed and sworn to  
21 by the certified person, is admissible in evidence in any court  
22 of the State. It is prima facie evidence that the percentage by  
23 weight of alcohol in the defendant's blood was, at the time the  
24 breath sample was taken, as stated in the certificate, unless,  
25 with 10 days' written notice to the prosecution, the defendant  
26 requests that the operator or other qualified witness testify as  
27 to the results of the analysis.

28 Transfer of sample specimens to and from a laboratory for  
29 purposes of analysis is by certified or registered mail and, when  
30 so made, is deemed to comply with all requirements regarding the  
31 continuity of custody of physical evidence.

32 The failure of a person to comply with the duty to submit to and  
33 complete a chemical test under section 204 is admissible in  
34 evidence on the issue of whether that person was under the  
35 influence of intoxicating liquor or drugs. If the law  
36 enforcement officer having probable cause to believe that the  
37 person operated or attempted to operate an aircraft while under  
38 the influence of intoxicating liquor or drugs fails to give  
39 either of the warnings required under subsection 2, the failure  
40 of the person to comply with the duty to submit to a chemical  
41 test is not admissible, except when a test was required pursuant  
42 to subsection 11. If a failure to submit to and complete a  
43 chemical test is not admitted into evidence, the court may inform  
44 the jury of the fact that no test result is available.

45 If a test result is not available for a reason other than failing  
46 to comply with the duty to submit to and complete a chemical  
47 test, the court may inform the jury of the fact that no test result  
48 is available.



2 test, the unavailability and the reason are admissible in  
3 evidence.

4 8. Statements by accused. Any statement by a defendant  
5 that the defendant was the operator of an aircraft that the  
6 defendant is accused of operating in violation of section 202,  
7 subsection 11 is admissible if it was made voluntarily and is  
8 otherwise admissible under the United States Constitution or the  
9 Constitution of Maine. The statement may constitute sufficient  
10 proof by itself, without further proof of corpus delicti, that  
11 the aircraft was operated and was operated by the defendant.

12 9. Payment for tests. Persons authorized to take specimens  
13 of blood at the direction of a law enforcement officer and  
14 persons authorized to perform chemical tests of specimens of  
15 blood or breath must be paid from the Highway Fund.

16 10. Accidents and officer's duties. The law enforcement  
17 officer has the following duties.

18 A. After a person has been charged with operating or  
19 attempting to operate an aircraft while under the influence  
20 of intoxicating liquor or drugs or with an excessive  
21 blood-alcohol level, the investigating or arresting officer  
22 shall investigate to determine whether the charged person  
23 has any previous convictions of a violation of section 202,  
24 subsection 11 or adjudications for failure to comply with  
25 the duty to submit to and complete a chemical test under  
26 section 204. As part of that investigation, the officer  
27 shall review the records maintained by the courts, the  
28 department, the State Bureau of Identification or the  
29 Secretary of State, including telecommunications of records  
30 maintained by the Secretary of State.

31 B. A law enforcement officer may arrest, without a warrant,  
32 any person whom the officer has probable cause to believe  
33 operated or attempted to operate an aircraft while under the  
34 influence of intoxicating liquor or drugs if the arrest  
35 occurs within a period following the offense reasonably  
36 likely to result in the obtaining of probative evidence of  
37 blood-alcohol level or drug concentration.

38 C. A law enforcement officer shall report the results of a  
39 chemical test administered, or the refusal of a person to  
40 submit to a chemical test, pursuant to this section to the  
41 Federal Aviation Administration.

42 11. Fatalities. Notwithstanding any other provision of  
43 this section, an operator of an aircraft who is involved in an  
44 aircraft accident that results in the death of a person must  
45 submit to a chemical test.

2 submit to and complete a chemical test to determine that person's  
4 blood-alcohol level or drug concentration by analysis of blood,  
6 breath or urine. A law enforcement officer may determine which  
8 type of test will be administered. The result of a test taken  
pursuant to this subsection is not admissible at trial unless the  
court is satisfied that probable cause exists, independent of the  
test result, to believe that the operator was under the influence  
of intoxicating liquor or drugs or had an excessive blood-alcohol  
level.

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### STATEMENT OF FACT

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This bill expands on the law concerning the operation of aircraft under the influence by making the offense more consistent with laws governing hunting or operating snowmobiles, motor vehicles, ATV's or watercraft under the influence or with an excessive blood-alcohol level. The bill imposes a duty to submit to a chemical test on operators of aircraft and provides other testing and procedural elements that exist in the other operating-under-the-influence and chemical testing laws.

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This bill differs from other operating-under-the-influence laws primarily in 2 ways. First, the excessive blood-alcohol level for operators of aircrafts is set at 0.04% or more by weight of alcohol in the blood to be consistent with regulations of the Federal Aviation Administration. Secondly, under the Maine Revised Statutes, Title 6, section 205, subsection 10, paragraph C as enacted in this bill, results of any chemical test given to an operator of an aircraft or the refusal by an operator of an aircraft to submit to a chemical test must be reported to the Federal Aviation Administration.

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